

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
JOHN S AND MARIA DEMAIIO : DETERMINATION
for Redetermination of a Deficiency or for Refund of New : DTA NO. 830486
York State Personal Income Tax under Article 22 of the :
Tax Law for the Years 2015 and 2016. :

Petitioners, John S and Maria DeMaio filed a petition for redetermination of a deficiency or for refund of New York State personal income tax under article 22 of the Tax Law for the years 2015, and 2016. On August 26, 2022, the Division of Tax Appeals issued a notice of intent to dismiss petition pursuant to 20 NYCRR 3000.9 (a) (4). The Division of Taxation, appearing by Amanda Hiller, Esq. (Amanda Alteri, Esq., of counsel), submitted a letter in support of the dismissal. Petitioners, appearing by Honeycutt & McGuire CPAs (Jack O. Honeycutt, CPA), did not submit a response by September 26, 2022, which date triggered the 90-day deadline for issuance of this determination.¹ For good cause, the deadline for the issuance of the determination was extended consistent with Tax Law 2010 (3). After due consideration of the documents submitted, Herbert M. Friedman, Jr., Supervising Administrative Law Judge, renders the following determination.

ISSUE

Whether the Division of Tax Appeals lacks jurisdiction over the petition.

¹ On December 21, 2022, the Division of Tax Appeals sent a letter to petitioners' representative with a copy to petitioners, that to date, the Division of Tax Appeals does not have a power of attorney authorizing him to represent petitioners that is dated on or before June 4, 2021. The Division of Tax Appeals gave both parties 30 days to respond from the date of that letter.

FINDINGS OF FACT

1. Petitioners filed a petition through Jack O. Honeycutt, CPA, that was received by the of Tax Appeals on June 8, 2021. The envelope containing the petition bears a USPS postmark indicating the petition was mailed on June 4, 2021.

2. The petition was dated June 4, 2021 and did not include a statutory notice or conciliation order.

3. The petition lists Jack O. Honeycutt as petitioners' representative. Mr. Honeycutt is identified on the petition as a certified public accountant duly qualified to practice in New York State.

4. Mr. Honeycutt signed the petition on behalf of petitioners. An executed power of attorney form did not accompany the petition.

5. On June 29, 2021, the Division of Tax Appeals sent a letter to petitioners identifying the deficiencies in the petition and that failure to correct within 30 days may result in a dismissal.

The letter to petitioners indicated the following:

- i. The petition does not include a statutory notice.
- ii. A power of attorney did not accompany the petition.

6. In response to the letter dated June 29, 2021, from the Division of Tax Appeals, petitioners provided a copy of i) a notice of deficiency bearing assessment number L-052980054 issued by the Department of Taxation and Finance on March 3, 2021; ii) a notice and demand for payment of tax due bearing assessment number L-052980054 issued by the Department of Taxation and Finance on June 18, 2021; iii) a power of attorney form (form POA-1) executed by the petitioners on September 28, 2021; and iv) a power of attorney form (form TA-105) executed by the petitioners on October 18, 2021.

7. On August 26, 2022, the Division of Tax Appeals issued a notice of intent to dismiss petition. The notice stated, in sum, that the petition is in improper form and the Division of Tax Appeals lacks jurisdiction.

8. In response to the notice of intent to dismiss petition, the Division of Taxation's (Division's) representative submitted a letter on September 22, 2022 stating:

“[t]he Division is in receipt of the Notice of Intent to Dismiss the petition in the above referenced matter. The petition submitted did not include a valid power of attorney. Additionally, the petition submitted was not in proper form because petitioners' representative did not request special permission to represent petitioners before the Tribunal. Thus, the petition has not been signed by an authorized person, as required by 20 NYCRR 3000.2, 20 NYCRR 3000.3, and the Division is in agreement with the proposed dismissal.”

9. On December 21, 2022, the Division of Tax Appeals sent a letter to petitioners' representative, with a copy to petitioners, stating that the Division of Tax Appeals does not have a proper power of attorney authorizing him to represent petitioners that is dated on or before June 4, 2021. The letter also stated that failure to provide a proper power of attorney would result in dismissal.

10. Neither petitioners nor their representative submitted a response to the notice of intent to dismiss petition.

CONCLUSIONS OF LAW

A. Pursuant to 20 NYCRR 3000.3 (b) (7), a petition shall contain “the signature of the petitioner or the petitioner's representative.”

B. An individual will not be recognized as the representative of a taxpayer until a power of attorney in proper form is filed with the Division of Tax Appeals (*see* 20 NYCRR 3000.3 [c]). In the instant case, the petition was filed on June 4, 2021, and was not signed by petitioners, but by Mr. Honeycutt. A power of attorney authorizing Mr. Honeycutt's signature was not

